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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9219 OF 2017

**SAMBHAJI BHAUSAHEB SHIRSATH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**...
Advocate for Petitioner : Tope Sambhaji S.
Govt.Pleader for Respondents:Mr.A.B.Girase**

**...
CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 19/07/2017

PER COURT :-

1] The petitioner complains that the vehicle and which was utilised during the course of execution of a contract with the Government has been seized illegally.

2] The specific averment in the Writ Petition is that this vehicle has been seized without any prima facie material and particularly of the nature stipulated in sub-section 8 of Section 48 of the Maharashtra Land Revenue Code, 1966. The petitioner has in the course of his business placed his bid for several contracts. He specifically relies upon contracts with the Public Works Department. He states that he has three heavy vehicles and which are utilised for transportation of construction material. One such vehicle bears Registration No.MH-21-X-9871 that was purchased in the month of March, 2017. The petitioner was executing the work of construction of new room in Primary Health Center at village Kumbhar

Pimpalgaon, Tq. Ghansawangi, Dist.Jalna, the work order dated 2/12/2010 is relied upon. It is stated that this work was being performed amongst others. That is how for the purpose of construction the petitioner brought in and transported the required material which include sand, murum etc. The petitioner is aware that royalty has to be paid for extraction and excavation so also transport of this material. That is deducted from the running bills. During the course of execution of such lawful contract suddenly the petitioner's vehicle of the above registration number has been seized and the Tahsildar has drawn up a memo dated 11/7/2017. He has alleged that this vehicle was utilised for unauthorisedly and illegally transporting sand that is how the vehicle was seized and brought to the Tahsil office, Jalna. This action is challenged in this petition on several grounds.

3] One of the arguments is that this power is drastic in nature. Before this power is exercised there has to be prima facie satisfaction and recorded by the authority. Secondly the entire procedure set out in sub-sections 7 and 8 of Section 48 has not been followed.

4] On such a petition and complaint of the petitioner we called upon the learned Government Pleader in the morning session to produce the necessary records so as to justify the seizure.

5] The learned Government Pleader was fair to bring to our notice the office remarks and which records the seizure. He was fair in stating that the procedure prescribed by sub-section 8 of section 48 and particularly Clause -2 thereof has not been followed.

6] Once this concession comes from the Government Pleader on

instructions then all that remains is to direct release of this vehicle.

7] We therefore, direct the release of this vehicle on the petitioner executing personal bond in terms of Clause-2 of sub-Section 8 of Section 48 of the Maharashtra Land Revenue Code. The bond be furnished and of an amount not exceeding market value of the seized vehicle. On execution of such a bond, the vehicle be released and handed over to the petitioner. The Writ Petition is disposed of in these terms but without prejudice to the rights and contentions of both sides. Parties to act upon authenticated copy of this order.

(MANGESH S. PATIL,J.) (S.C.DHARMADHIKARI,J.)

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